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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,990	09/28/2001	Jerry L. Carlson	98-HSP-245	4857

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EXAMINER

VAN PELT, BRADLEY J

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/965,990

Applicant(s)

CARLSON ET AL.

Examiner

Bradley J Van Pelt

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "disc-like portion" in claim 8 is a relative term, which renders the claim indefinite. The term "disc-like portion" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention (see claim 8, line 2).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 6, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Takada et al. (USPN 6,508,059) herein after Takada.

Takada disclose a hydrostatic transmission comprising a housing assembly (9), a variable displacement fluid pump (11), (see column 1, lines 17-20) and a fluid pressure operated motor

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(21) disposed in said housing assembly; said fluid pump including a pump inlet (92) and a pump outlet (91), and said fluid motor including a motor inlet (93) and a motor outlet (94), and said housing assembly being in fluid communication with a source of low pressure fluid, disposed within said housing assembly, said hydrostatic transmission defining a flow path including, in order, said pump inlet, said pump outlet, said motor inlet, and said motor outlet; said hydrostatic transmission further including a filter assembly (80) disposed such that substantially all flow in said flow path flows through said filter assembly; characterized by:

a) said housing assembly defining a planar recessed area (84) intersecting said flow path at a location between said source of low pressure fluid and said pump inlet, the flow area of said recessed area being substantially greater than the flow area of said flow path (see fig. 6 area 84 diverges);

b) said filter assembly comprising a piece of filter material disposed within said recessed area and co-planar therewith, and attached directly thereto in a manner sufficient to maintain said piece of filter material within said recessed area during flow through said flow path;

said housing assembly including a radially-extending disc portion (10) disposed axially between said fluid pump and said fluid motor; said disc portion defining said recessed area and defining a fluid passage (82) disposed downstream of said recessed area and in fluid communication with said pump inlet;

a check valve (83) disposed in said fluid passage, the check valve is operable to permit flow through said filter assembly, then through said fluid passage and said check valve, and into said pump inlet (see diagram fig. 7).

***Claim Rejections - 35 USC § 103***

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takada in view of Woodley (USPN 5,136,854).

Takada disclose a radially extending disk portion (10) disposed axially between piston pump and piston motor; radially extending disc portion defining a first recessed area (84), a first piece of filter material (80) disposed in the first recessed area.

Takada does not disclose said fluid pump comprising a radial piston pump and said fluid pressure operated motor comprising a radial piston motor;

said housing assembly comprises a pintle assembly;

disc portion of said pintle defining said recessed area;

radially disc portion defining a second recessed area, and said filter assembly comprising second piece of filter material disposed in second recessed area.

Woodley shows a fluid pump comprising a radial piston pump (15) and said fluid pressure operated motor comprising a radial piston motor (17);

a housing assembly comprises a pintle assembly (35);

a disc portion (65) of said pintle defining a recessed area (hole and groove leading into check valve 63).

radially disc portion defining first and second recessed areas (hole and groove leading into check valve 63, and recessed area counterclock-wise from hole).

To modify the apparatus of Takada so as to provide a radial piston pump and motor in combination with a pintle assembly would have been obvious to one of ordinary skill in the art in view of the teachings of Woodley that such an arrangement reduces the overall size and weight of the crankshafts in each of the pump and motor, therefore increasing the efficiency and reducing the cost of operation of the apparatus.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use first and second pieces of filter material, since it has been held that mere duplication of the essential working parts of a device only involves routine skill in the art.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takada in view of Suzuki (USPN 6,183,526).

Takada disclose all of the instantly claimed invention according to claim 1, except said piece of filter material comprises a single piece of pleated filter paper, said piece of filter paper being attached within said recessed area by means of an adhesive material being in contact with both said piece of filter paper and said recessed area of said housing assembly.

Suzuki renders obvious said piece of filter material comprises a single piece of pleated filter paper (column 9, lines 16-17), said piece of filter paper being attached within said recessed area by means of an adhesive material (column 6, lines 36-39) being in contact with both said piece of filter paper and said recessed area of said housing assembly.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Takada by constructing the filter out of pleated paper and to include an adhesive for attachment to the housing, as taught by Suzuki, for the purpose of removing impurities and to prevent the filter from coming down in the housing.

*Response to Arguments*

8. Applicant's arguments filed October 27, 2003 have been fully considered but they are not persuasive. The applicant argues that the Takada et al. reference does not show a piece of filter material disposed within said recessed area and co-planar therewith. A broad interpretation of this limitation would encompass infinite planes, including a plane in the recess extending parallel to the flow. Takada et al. show a plane parallel to the flow direction, which would be co-planar with a piece of filter paper in the oil filter (80). Thus, Takada et al. anticipate this limitation.

*Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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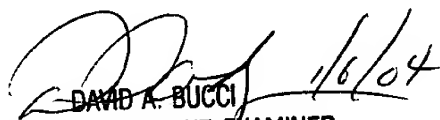
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley J Van Pelt whose telephone number is 703.305.8176.

The examiner can normally be reached on M-Th 7:00-4:30, 2nd F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on 703.308.3668. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9326 for regular communications and 703.872.9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.2168.

BJVP

  
DAVID A. BUCCI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600